

supported. It by no means follows, that because tolls are paid at the rate of ten per cent. on the capital stock, that, therefore, it would be just to charge the road ten per cent. on cash balances due from it. Out of the tolls the expenses of the road are to be paid ; and it may very well happen, that when they are defrayed, much less than six per cent. would remain for the stockholders.

I do not think the charge in the same account of \$1,350, can be supported. That sum appears to me, from the evidence, to have been placed in the hands of the complainant, as the agent of Patrick T. Jackson, mentioned in the receipt of C. D. Williams, of the 19th of September, 1828.

It also appears to me, that the sum of \$1,350, charged to the complainant in the account marked I. I., is identical with the sum charged in the rail road account, and is thus twice charged, when, as I think, from the proof now before me, it should not have been charged at all.

With regard to the sum of \$2,353 33, charged to the complainant in the account I. I., being for money, the property of the defendant, paid by the complainant, in the purchase of land from Mr. Herbert and Mr. Worthington, the plaintiff has not succeeded in satisfying me that the charge is erroneous.

It is very clear, I think, that even if the charter of the Savage Manufacturing Company authorized them to purchase and hold these lands, that the mode in which the complainant, according to his own showing, procured the assent of the stockholders, conferred upon him no power thus to use the corporate funds. And, moreover, when the complainant petitioned for the benefit of the insolvent laws, in the spring of 1843, he returned Mr. Worthington, as one of his creditors, for lands purchased. Now, although this was at a period prior to the full restoration of the complainant to health, in mind and body, and although I am persuaded, that his mind was at that time enfeebled, and, perhaps, unfitted to investigate and understand accounts of a complicated nature ; yet, I am far from thinking he could not comprehend the simple proposition, whether this debt due Mr. Worthington, was due from him or from the Savage Factory.